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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,553	09/03/2003	Torahiko Hayashi	P-123374.06	5102

7590 10/26/2005

Thomas E. Sisson
JACKSON WALKER L.L.P.
Suite 2100
112 E. Pecan Street
San Antonio, TX 78205

EXAMINER	
MYERS, ADAM C	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/654,553	HAYASHI ET AL.	
	Examiner	Art Unit	
	Adam C. Myers	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/2/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because the abstract should only be one paragraph. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: The ID term "V1" is used to describe both a direction of movement and the speed of the rolling rollers.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims state the term "it," yet there is insufficient claim language to determine what "it" describes.

Claims 2, 4, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims state "rolling roller," but it is unclear whether there is a single roller or a plurality of rollers.

Claims 1, 2, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. The claims state a speed, but it is not clear what speed of which components are being referred to.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, and 3-6 of copending Application No. 10/458574. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the copending application cite limitations of a first rolling member having a plurality of rolling rollers, each of which moves sequentially upstream from downstream and beats and rolls the dough belt being conveyed, and a second rolling member, which conveys and tolls the dough belt between the first and second rolling members. Control means are not recited in the instant claim, but control means would be an obvious addition to the claim, as it is necessary to supply means for monitoring the rollers during operation. Claim 3 of the copending application recites essentially the same limitation as the instant claim 2

of the application. Claims 4-6 of the copending application recite identical limitation as the instant claims 3-5 of the application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashi (US Pat 4,631,017). Hayashi has taught an apparatus for rolling dough, the apparatus comprising a first rolling member (Fig 2, ID 7), having a plurality of planetary rollers (ID 5) that move sequentially from upstream to downstream (Fig 1, direction arrow), each planetary roller rotating about its own axis (col 3, line 36), and a second rolling member (ID 2, 3, 4). The apparatus further comprises means for controlling the moving speed and direction of the rollers, the means characterized by a shaft (ID 8), a gear (ID 9), and a motor (ID 10). The apparatus also discloses means to control the rotating speed and direction, characterized by a friction plate (ID 11, and col 3, lines 46-49).

In regard to claim 3, Hayashi has taught a planetary roller mechanism, characterized by the planetary rollers (ID 5), having a shaft (ID 6), the shaft connected

to the first rolling member (ID 7) that is driven by a drive shaft (ID 8) that is rotated through a gear (ID 9), the gear being rotated by the motor (ID 10).

In regard to claim 5, the second rolling member comprises a conveying roller (ID 3) and a supplying conveyor (ID 2), with a space disposed there between, as illustrated by Figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi ('017) in view of Hayashi (US Pat 5,154,941). Hayashi ('017) is taken as cited above. Hayashi ('017) does not recite that the peripheral speed of the planetary rollers is equal to or almost equal to the surface speed of the food dough belt. Hayashi ('941) has taught an apparatus and a method for stretching dough, the apparatus comprising

an upstream dough conveyor (ID 4), a downstream dough conveyor (ID 6), and rollers (ID 10). Hayashi ('941) has taught that in one embodiment, the peripheral speed of the rollers is the same as the conveying speed of the downstream conveyor (col. 1, lines 59-68), and hence the same speed as the dough being conveyed by the downstream conveyor. With the peripheral speed of the roller being the same as the downstream conveyor, the roller can reciprocate at a predetermined distance above the path stretching over the conveyors. It would have been obvious to one of ordinary skill in the art to run the first rolling member of Hayashi ('017) according to the disclosure of Hayashi ('941) since both are directed to apparatus for stretching dough, and Hayashi ('017) already included rolling means and conveying means, having the values for the peripheral speed of the roller and the speed of the downstream conveyor being the same allows the roller to reciprocate at a predetermined distance above the path stretching over the conveyors.

In regard to claim 7, Hayashi ('017) has taught a method for rolling a dough which is conveyed past a first rolling member (ID 7) having a plurality of planetary rollers (ID 5) that move sequentially from upstream to downstream, each planetary roller rotates on its own axis by way of a shaft (ID 6). Hayashi ('017) does not recite that the peripheral speed of the planetary rollers is equal to or almost equal to the surface speed of the food dough belt. Hayashi ('941) has taught an apparatus and a method for stretching dough, the apparatus comprising an upstream dough conveyor (ID 4), a downstream dough conveyor (ID 6), and rollers (ID 10). Hayashi ('941) has taught that in one embodiment, the peripheral speed of the rollers is the same as the conveying

speed of the downstream conveyor (col. 1, lines 59-68), and hence the same speed as the dough being conveyed by the downstream conveyor. With the peripheral speed of the roller being the same as the downstream conveyor, the roller can reciprocate at a predetermined distance above the path stretching over the conveyors. It would have been obvious to one of ordinary skill in the art to run the first rolling member of Hayashi ('017) according to the disclosure of Hayashi ('941) since both are directed to apparatus for stretching dough, and Hayashi ('017) already included rolling means and conveying means, having the values for the peripheral speed of the roller and the speed of the downstream conveyor being the same allows the roller to reciprocate at a predetermined distance above the path stretching over the conveyors.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi in view of Muller et al (US Pat 5,310,569). The teaching of Hayashi is taken as cited above. Hayashi does not recite a second rolling member comprising a conveying roller having a larger diameter than that of the planetary roller. Muller has disclosed an apparatus for producing stress free continuous dough. The apparatus comprises a series of planetary rollers (Fig 2, ID 64) being able to rotate about their own axis (col. 6, line 64), a second rolling member (ID 68), and means to convey (ID 60) the dough past the rolling means. As illustrated by Figure 2, the diameter of the second rolling member is greater than that of the planetary roller, providing more surface area for rolling the dough, providing more contact area for the dough as it passes between the rollers, thus giving a thinner dough with less stress. It would have been obvious to one of ordinary skill in the art to incorporate the larger diameter second rolling member of Muller into the

invention of Hayashi since both are directed to apparatus for rolling dough, since Hayashi already included a second rolling member, and since the larger diameter of Muller provides more surface area for rolling the dough, and thus permitting a thinner rolled dough with less pressure.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi ('017) in view of Hayashi (US Pat 5,843,510). Hayashi ('017) is taken as cited above. Hayashi ('017) does not recite that a vertical surface passing through an axis of the first rolling member is arranged upstream from a vertical surface passing through an axis of the second rolling member. Hayashi ('510) has disclosed an apparatus for stretching bread dough, the apparatus comprising a first rolling member (ID 7) having a plurality of planetary roller (ID 5, 5') and a second rolling member (ID 35), the first rolling member being arranged upstream of the second rolling member, the offset second rolling member providing more contact area for the dough as it passes between the rollers, thus giving a thinner dough with less stress. It would have been obvious to one of ordinary skill in the art to incorporate the offset roller pairing taught in Hayashi ('510) into the invention of Hayashi ('017) since both are directed to apparatus for rolling dough. Since Hayashi ('017) already included a second rolling member, and since the offset rolling member of Hayashi ('510) provided more contact area for the dough, and thus a thinner dough with less stress.

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (US Pat 5,804,225). Hayashi has disclosed an apparatus for stretching bread dough. The apparatus comprises a first rolling member (ID 7) having a plurality

of planetary rollers (ID 5, 5') that are capable of rotating on their axis on a shaft (ID 6), a second rolling member (ID 34, 35). The apparatus further comprises means for controlling the moving speed and direction of the planetary rollers, characterized by a drive shaft (ID 8) attached to the first rolling member, the drive shaft attached to a gear (ID 9), the gear being rotated by a motor (10). Hayashi does not recite control means for controlling the rotating speed and direction of the planetary rollers. Hayashi does recite that the second rolling member comprises at least two rolling conveyors (ID 34, 35), each being driven by a motor (ID 54, 55), the motors controlled by an adjusting device (ID 56). The individual motors and adjusting device allows one to vary the speed of the rolling conveyors, and thus stretch the dough as it is being rolled. It would have been obvious to one of ordinary skill in the art to adapt the rotating speed control means of Hayashi ('225) to the planetary rollers since both the planetary rollers and the rolling conveyors are both directed to means for rolling dough to a required thickness, and since the planetary rollers are already capable of rotating free of the other planetary rollers, the individual control means provides an improved means for stretching the dough (col 5, lines 3-11).

In regard to claim 3, Hayashi has taught a planetary roller mechanism, characterized by the planetary rollers (ID 5), having a shaft (ID 6), the shaft connected to the first rolling member (ID 7) that is driven by a drive shaft (ID 8) that is rotated through a gear (ID 9), the gear being rotated by the motor (ID 10).

In regard to claim 5, the second rolling member comprises a conveying roller (ID 3) and a supplying conveyor (ID 2), with a space disposed there between, as illustrated by Figure 1.

In regard to claim 6, Hayashi has disclosed in Figure 1 a first rolling member arranged such that a vertical surface through the axis of the first rolling member is upstream of a vertical surface drawn through the axis of a second rolling member (ID 34, 35).

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi ('225) in view of Hayashi ('941). The teaching of Hayashi ('225) has been outlined above. Hayashi ('225) does not recite that the peripheral speed of the planetary rollers is equal to or almost equal to the surface speed of the food dough belt. Hayashi ('941) has taught an apparatus and a method for stretching dough, the apparatus comprising an upstream dough conveyor (ID 4), a downstream dough conveyor (ID 6), and rollers (ID 10). Hayashi ('941) has taught that in one embodiment, the peripheral speed of the rollers is the same as the conveying speed of the downstream conveyor (col. 1, lines 59-68), and hence the same speed as the dough being conveyed by the downstream conveyor. With the peripheral speed of the roller being the same as the downstream conveyor, the roller can reciprocate at a predetermined distance above the path stretching over the conveyors. It would have been obvious to one of ordinary skill in the art to run the first rolling member of Hayashi ('225) according to the disclosure of Hayashi ('941) since both are directed to apparatus for stretching dough, and Hayashi ('225) already included rolling means and conveying

means, having the values for the peripheral speed of the roller and the speed of the downstream conveyor being the same allows the roller to reciprocate at a predetermined distance above the path stretching over the conveyors.

In regard to claim 7, Hayashi ('225) has taught a method for rolling a dough which is conveyed past a first rolling member (ID 7) having a plurality of planetary rollers (ID 5) that move sequentially from upstream to downstream, each planetary roller rotates on its own axis by way of a shaft (ID 6). Hayashi ('225) does not recite that the peripheral speed of the planetary rollers is equal to or almost equal to the surface speed of the food dough belt. Hayashi ('941) has taught an apparatus and a method for stretching dough, the apparatus comprising an upstream dough conveyor (ID 4), a downstream dough conveyor (ID 6), and rollers (ID 10). Hayashi ('941) has taught that in one embodiment, the peripheral speed of the rollers is the same as the conveying speed of the downstream conveyor (col. 1, lines 59-68), and hence the same speed as the dough being conveyed by the downstream conveyor. With the peripheral speed of the roller being the same as the downstream conveyor, the roller can reciprocate at a predetermined distance above the path stretching over the conveyors. It would have been obvious to one of ordinary skill in the art to run the first rolling member of Hayashi ('225) according to the disclosure of Hayashi ('941) since both are directed to apparatus for stretching dough, and Hayashi ('225) already included rolling means and conveying means, having the values for the peripheral speed of the roller and the speed of the downstream conveyor being the same allows the roller to reciprocate at a predetermined distance above the path stretching over the conveyors.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morikawa (US Pat 6,171,629), Morikawa (US Pat 6,257,861), Morikawa (US Pat 5,783,218), Morikawa et al (US Pat 5,118,274), Morikawa et al (US Pat 5,079,014), and Morikawa et al (US Pat 5,266,341).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Myers whose telephone number is 571-272-6466. The examiner can normally be reached on Monday-Friday, 8am-4: 30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DREW BECKER
PRIMARY EXAMINER
10-20-09

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